FOR ARGUMENT

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-142

UNITED STATES OF AMERICA,

Petitioners,

v.

DONALD LAVERN CULBERT,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

Respondent accepts the statement of the case set forth in the government's brief as substantially correct.

SUMMARY OF ARGUMENT

1. Notwithstanding this Court's dictum in *Stirone v. United States*, 361 U.S. 212, 215, that the Hobbs Act contains broad language manifesting a congressional

intent to exercise the full extent of power, this Court later held that being a criminal statute, the act must be strictly construed. *United States v. Enmons*, 410 U.S. 396 (1973).

2. When a broad interpretation of the statute results in an unwarranted incursion into the police power of the State, the intent and purpose of Congress to effect such an intrusion must be clear.

3. The legislative history of the Hobbs Act, 60 Stat. 420, codified at 62 Stat. 793, 18 U.S.C. §1951, and its predecessor statute, the Federal Anti-Racketeering Act of 1934 (Copeland Act), 48 Stat. 979, supports the conclusion that the legislation was aimed at racketeering which directly affected interstate commerce. The original bill was part of a 1934 package of anti-crime legislation to curb the crisis brought about by gangster and racketeering activities. Through the judicial expansion of the scope of the commerce clause, the statute appears to apply to any extortion or robbery of any victim having a *de minimus* contact with interstate commerce. Such a broad application of the statute is not in accord with the congressional intent, and results in an unwarranted intrusion into the sovereignty of the states.

I.

THE SCOPE OF THE HOBBS ACT MUST BE LIMITED TO PRESERVE THE STATE-FEDERAL BALANCE.

This case involves another instance where the government seeks an overbroad application of a federal

statute resulting in the usurpation of primary state jurisdiction. While perhaps lamentable, the Bank Robbery Act (48 Stat. 783, 50 Stat. 749), 18 U.S.C. §2113, does not specifically cover extortionate transactions involving national banks. See the legislative history in *Jerome v. United States*, 130 F.2d 514 (2d Cir. 1942), affirmed, 318 U.S. 101 (1943); *LeMasters v. United States*, 378 F.2d 262 (9th Cir. 1967). Extortionate conduct is comprehensively proscribed in California. Calif. Penal Code, §§518, 519.

Because the effect on commerce under the Hobbs Act need only be *de minimis*, the potential exists for virtually unlimited federal interference in state and local law enforcement. The need to restrict such federal interference was the underlying rationale for the decision below, by establishing a balance between legitimate federal and state interests by requiring a showing of "racketeering" in order to sustain a Hobbs Act conviction. The Court stated:

> "Given the applicable *de minimis* burden on interstate commerce rule [citation omitted] a contrary interpretation of the Act would justify federal usurpation of virtually the entire criminal jurisdiction of the states. Considerations of federalism, apart from the legislative history also emphasized in *Yokley*, cannot permit a conclusion that Congress intended to work such an extraordinary and unprecedented encroachment into the realm of state sovereignty." (*United States v. Culbert*, 548 F.2d 1355, 1357 (9th Cir. 1977)), Pet. App. 3a.

United States. v. Yokley, 542 F.2d 300 (6th Cir. 1976) held that ". . . . although an activity may be within the literal language of the Hobbs Act, it must

constitute 'racketeering' to be within the perimeters of the Act." 542 F.2d at 304. That court required "explicit statutory language" in order to sustain "a federal incursion into the criminal jurisdiction of the states." *Id.* In so doing, the court relied upon this Court's decision in *United States v. Enmons*, 410 U.S. 396, 93 S.Ct. 1007, 35 L.Ed.2d 379 (1973), which said:

> "... [I]t would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. Neither the language of the Hobbs Act nor its legislative history can justify the conclusion that Congress intended to work such an extraordinary change in federal labor law or such an unprecedented incursion into the criminal jurisdiction of the states [citations omitted].
>
> "As we said last Term:
>
> " '[U]less Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance. Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the States .... [W]e will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction." *United States v. Bass*, 404 U.S. 336.
>
> 410 U.S. at p. 411-412.

The government, relying upon this Court's dictum in *Stirone v. United States*, 361 U.S. 212 (1960), Brief of the United States, p. 11, asserts that Congress intended "to use all the constitutional power [it] has to punish interference with interstate commerce by extortion,

robbery or physical violence," and that Congress' use of the term "whoever" reflected this intent. It is apparent that Congress did indeed wish to bring all the forces of the federal government to bear on punishing interferences with interstate commerce, as that term was understood in 1934 and 1946. It is also clear that the target of the legislation was "racketeering," whether or not connected with the labor movement. To adopt the interpretation urged by the government that the Hobbs Act covers *all* activity, without restriction, that has *any affect* on "commerce," as that term is now known, is to afford a coverage so substantial that the federal government will find itself policing local criminal activity with a *de minimus* effect on interstate commerce. The Court of Appeals held that considerations of federalism mandate some restriction on such broad language to prevent an allout intrusion into state police matters. As this Court stated in *United States v. Bass*, 404 U.S. 336 at p. 350:

> In the instant case, the broad construction urged by the Government renders traditionally local criminal conduct a matter for federal enforcement and would also involve a substantial extension of federal police resources.

The government characterizes the Hobbs Act as "unambiguous legislation," since it uses the word "whoever," and fails to specifically use the term "racketeering." While the *Stirone* dictum has been repeatedly cited to support the broad interpretation urged by the government, this Court held more recently that the Hobbs Act, "being a criminal statute, [it] must be strictly construed...." *United States v. Enmons*, 410 U.S. 396 at p. 411 (1973). Almost every court

called upon to interpret the Hobbs Act and its predecessor, the Copeland Act,[1] has resorted to the legislative history to ascertain the true scope of the statute.

As the decision below held, when the plain language of the statute is so broad that its application runs afou of reserved states rights, the courts must impose limitations to effect the true legislative purpose.

II.

THE LEGISLATIVE HISTORY OF THE HOBBS ACT COMPELS THE REQUIREMENT OF "RACKETEERING".

The legislative history of the Hobbs Act is considered at length in *United States v. Yokley*, 542 F.2d 300 (6th Cir. 1976) and by this Court in *United States v. Enmons*, 410 U.S. 396, 93 S.Ct. 1007, 35 L.Ed.2d 379 (1973). These cases demonstrate that the act was in response to this Court's decision in *United States v. Local 807*, 315 U.S. 521, 62 S.Ct. 642, 86 L.Ed. 1004 (1941) which had applied then Section 2(a) of the Anti-Racketeering Act of 1934 to exclude extortion of payments from interstate truckers by striking members of a labor union.

The focus of the Congressional debate over the Hobbs Act was a concern that it was punitive legislation directed solely at organized labor. Seizing upon the proponents' expressions of reassurance to labor interests

[1] The Anti-Racketeering Act of 1934, 48 Stat. 979.

that the bill was applicable to *anyone*, the government seeks to support its contention that Congressional intent in the enactment of the Hobbs Act was to reach even isolated instances of robbery and extortion which has even the slightest effect upon commerce.

This reliance is clearly misplaced. The statements the government cites were made merely to allay the fears of labor supporters that the bill was aimed solely at them. Such discussion came up, not in the context of racketeers/non-racketeers but, in fact, labor/non-labor.

The intensity of the sentiment against the bill is evidenced by the remarks of Congressman Sadowski:

> "The most highly publicized antilabor bill now before Congress is the Hobbs bill. The sponsors of this bill call it an Antiracketeering Act. We all agree that racketeering should be ended and that the punishment for racketeering should be severe. However, there is already an antiracketeering statute in Federal law which is called the Antiracketeering Act of 1934.
>
> The trouble with the Hobbs bill is that it can be construed by the courts to prohibit and punish most of the legitimate activities of organized labor . . . .
>
> The Hobbs bill is a bad bill. It is a vicious bill. If passed, it would pave the way for the destruction of organized American labor. Let us not fool ourselves. Success of bills like the Hobbs measure will pave the way for fascism in America in exactly the same way Hitler fastened the bloody tentacles of fascism upon the unhappy people of Europe." (89 Cong. Rec. 3207-08 (1943))

Proponents of the bill continually emphasized that the legislation was not aimed solely at labor. Congressman Hobbs remarked:

> "The first point I want to make briefly is that this is not an anti-labor bill, no matter who says it is . . . If any man, woman or child in the world will show me how any law-abiding member of organized labor can be affected by this bill, I will either offer an amendment correcting that threat, or I will vote against my own bill." (89 Cong. Rec. 3213 (1943)).

Similar reassurance was offered by Congressman Whittington:

> "It is maintained that the Hobbs bill is an attack on organized labor. There is no ground for such contention." (89 Cong. Rec. 3221 (1943)).

Regardless of Congressional concern with the claimed anti-labor aspects of the Hobbs Act, the same debate makes clear the intent to carry through the principal purpose of the 1934 legislation which was ". . . . designed to close gaps in existing federal laws and to render more difficult the activities of predatory criminal gangs of the Kelly and Dillinger types." *S. Rep. No.* 1440, 73rd Cong., 2d Sess. (1934). The objective of the Hobbs Act was the elimination of "racketeering" in relation to interstate commerce. *H. Rep. No.* 238, 79th Cong., 1st Sess. (1945); *H. Rep. No.* 66, 78th Cong., 1st Sess. (1943). The original House Report on the Hobbs Act stated:

> "This title is an amendment of the existing antiracketeering law which was passed in an effort to eliminate racketeering in relation to interstate commerce, of concern to the Nation as a whole." *H. Rep. No.* 66, 78th Cong., 1st Sess. (1943)

Other Congressional remarks confirm that the Hobbs Act was aimed at "racketeers" whether or not they were members of organized labor.

Congressman Whittington:

> "*The purpose of the bill is to prevent a repetition of the criminal terroristic activities of racketeers,* whether they are members of unions or not. (89 Cong. Rec. 3222 (1943)) (Emphasis Added)

Congressman Anderson:

> ". . . I hope that this bill will pass. *It is aimed at racketeers,* not honest laboring men of unions." (91 Cong. Rec. 11910 (1945)), (Emphasis Added)

Thus, the limited purpose of the Hobbs Anti-Racketeering Act was to *amend* the Antiracketeering Act of 1934 (Act of June 18, 1934, Ch. 566, §1-6, 48 Stat. 979) without affecting the scope of the 1934 Act. *United States v. Yokley*, 542 F.2d 300 (6th Cir. 1976).

The Court of Appeals for the Sixth Circuit stated in *Yokley, supra,* that:

> Since the Congressional intent in enacting the Hobbs Anti-Racketeering Act, as an amendment to the Anti-Racketeering Act of 1934, was "nothing more than . . . undoing the restrictive impact of [the Local 807] case", *Enmons, supra,* 410 U.S. at 408, 93 S.Ct. at 1014, it is necessary to examine the legislative history of the Act of 1934 to determine the scope of its successor, the Hobbs Act. Pursuant to a Senate Resolution of May 8, 1933, a subcommittee of the Senate Committee on Interstate Commerce, the Copeland Committee, undertook an investigation of "rackets" and "racketeering" in the United States. S. Res. 74, 73d Cong., 1st Sess. (1933). After several hearings, the Committee initiated 13 bills, of which S. 2248 was one. S. 2248 was reported favorably by the Senate Judiciary Committee as a means for "prosecution of racketeers," but the report indicated that practices "not accompanied by

manifestations of racketeering" were outside the scope of the Act. S. Rep. No. 1833, 73d Cong., 2d Sess. (1934) [Should be S. Rep. 532] After S. 2248 passed both the House and Senate without debate, Senator Copeland submitted a report in which he referred to the bill as a means "to close gaps in existing Federal laws and to render more difficult the activities of predatory criminal gangs of the Kelly and Dillinger types." S. Rep. No. 1440, 73d Cong., 2d Sess. (1934).

[3, 4] Moreover, the concern of Congress in amending the Act of 1934 by the enactment of the Hobbs Act was the elimination of "racketeering" in the United States. See, e.g., 89 Cong. Rec. 3205 (1945) (remarks of Congressman Celler); 89 Cong. Rec. 3207 (1945) (remarks of Congressman O'Hara); 91 Cong. Rec. 11844, 11905 (1945) (remarks of Congressman Robsion); 91 Cong. Rec. 11906 (1945) (remarks of Congressman Celler). Accordingly, although an activity may be within the literal language of the Hobbs Act, it must constitute "racketeering" to be within the perimeters of the Act.

542 F.2d at p. 303-304.

Senate Report No. 1189, (75th Congress, 1st Sess. (1937)) is illuminating in that it reflects a focus by Congress on the mid-thirties "crime wave" in general, and "racketeering" in particular. The report reads in pertinent part, that:

> Senate Resolution 74 of the Seventy-third Congress, adopted June 12, 1933, directed the Committee on Commerce, or any duly authorized subcommittee thereof, to investigate rackets and racketeering in the United States, and to report to the Senate the results of such investigation, together with recommendations for the enactment

> of legislation designed to check the spread of racketeering. (Report, p. 1)
>
> * * *
>
> Since crime, of which racketeering is one phase, has traditionally been regarded as essentially a local matter – that is, a matter within the exclusive jurisdiction of the States and their subdivisions – no investigation of a similar nature had ever before been undertaken, so far as we know, by any committee of the United States Senate. (Report pp. 1-2)
>
> * * *
>
> The public generally seemed to be unaware of, or at least not alive to, the jurisdictional boundaries in this field created by the constitutional limitations on the power of Congress.
>
> Additional confusion resulted from the fact that the words "racket" and "racketeering" have for some time been used loosely to designate every conceivable sort of practice or activity which was either questionable, unmoral, fraudulent or even disliked, whether criminal or not. Indeed, the very resolution which directed the investigation, did not help very much in defining and delimiting the scope of the work; nor was it desirable from the investigative aspect, that the scope of the inquiry should be too definitely fixed.
>
> There were, however, certain fundamental and obvious limitations upon the activities of the committee. First, *it was clear that the committee was not intended as a superpolice, nor as a prosecuting or judicial body for the supervision and investigation of the activities of local authorities.* On the contrary, the subcommittee was organized to consider ways and means by which the Federal Government might *aid in the suppression of rackets and racketeering, and, therefore, its*

activity would have to be limited for the most part to matters falling within the categories of interstate commerce and use of the mails. (Report, p. 2) [Emphasis Supplied]

* * *

At the outset of its work, the subcommittee adopted a working definition of the terms "racket" and "racketeering." In seeking such a definition, it consulted many legal authorities, as well as others who were studying the problem. . . . This definition is:

> *Racketeering is an organized conspiracy to commit the crimes of extortion or coercion,* or attempts to commit extortion or coercion, within the definition of these crimes found in the penal law of the State of New York and other jurisdictions. Racketeering, from the standpoint of extortion, is the obtaining of money or property from another with his consent, induced by the wrongful use of force or fear. The fear which constitutes the legally necessary element in extortion is induced by oral or written threats to do an unlawful injury to the property of the threatened person by means of explosives, fire, or otherwise; and to kill, kidnap, or injure him or a relative of his or some member of his family.
>
> Racketeering from the standpoint of coercion usually takes the form of compelling, by use of similar threats to person or property, a person to do or abstain from doing an act which such other person had the legal right to do or abstain from doing, such as joining a so-called protective association to protect his right to conduct a business or trade. Coercion as such does not necessarily involve the payment of money, but frequently both extortion and coercion are involved in racketeering.

This was used by the committee throughout the investigation, *and may be regarded as the official definition of the term "racketeering."* (Report, p. 2-3) [Emphasis supplied]

* * *

. . . The first New York hearing was held on August 14 and 15, 1933, and was devoted to testimony dealing with racketeering in general, as will (sic) as the laws then in existence for coping with racketeering and proposals for new legislation. (Report, p. 4)

* * *

. . . They also indicated the possibilities afforded to the unscrupulous for building *large and powerful underworld organizations – one of the characteristics of rackets not usually found in other forms of criminal activity.*

RACKETEERING

While racketeering is not something new, there has been a great development and increase of the criminal activities so termed during the past 15 years. As a result, the crime problem has become national in scope, since, *while we are not able to demonstrate that even a single racket has been organized on a national basis a large part of the activities of racketeers extends across state lines.* By this is not meant that the jurisdiction over rackets is Federal rather than local. *Jurisdictionally speaking, rackets are predominantly matters of local concern.* The national aspect arises, however, since the problem cannot be met unless all of the States and other local units throughout the country do their full part. Federal legislation has helped and can help. Rackets may be scotched by prosecution under the commerce or mail powers, when the requisite jurisdictional facts, such as use of the mails or crossing a State line, happen to be

present. *But under our present governmantal set-up the problem must be met in the first instance by strengthening State laws and by increasing the efficiency and vigilance of local police and prosecuting officers.* (Report, p. 10) [Emphasis supplied]

* * *

EXTORTION–COERCION

Although of all the types of crime investigated, kidnapping had attracted the most public attention, it was by no means the most widespread form of racketeering. The type of racket which affects industries, particularly in the large cities, and the different types of rackets perpetrated in the field of transportation, are the most common. *The definition of racketeering adopted by the committee states, as already noted, that racketeering is an organized conspiracy to commit crime through extortion, coercion, intimidation, or violence.* While these efforts are usually against individuals, yet trade and commerce suffer from the same evil. The prevalence and nature of this type of racketeering are too familiar to require further discussion. (Report p. 23-24) [Emphasis Supplied]

It is interesting to note that the Copeland Committee, in Part III of S.Rep. 1189, in summarizing the anti-crime legislation enacted and pending, labeled only *one* act as the "Racketeering Bill," Public Law No. 376 (S.2247-2248 Consolidated) "an Act to Protect Trade and Commerce against Interference by Violence, Threats, Coercion or Intimidation."

Thus, the only statute out of 16 bills passed and 26 pending which the Copeland Committee entitled the

"Racketeering Bill," was the predecessor of the Hobbs Act.[2]

It is obvious that the Copeland Committee, by adopting a working definition which "may be regarded as the official definition of the term 'racketeering,'" intended to give some clear meaning to the use of that term which had "for some time been used loosely to designate every conceivable, sort of practice or activity which was either questionable, unmoral (sic), fraudulent, or even disliked, whether criminal or not." S.Rep. No. 1189, 75th Congress, 1st Session (1937), p. 2-3, Brief of United States, p. 19.

The government concedes that the definition "strongly influenced the drafting of the 1934 Act," but relies upon the failure of the Act to require proof of a

[2]Bills enacted: Bank Robbery, Division of Investigation, Extortion, Firearms, Fugitive from Justice, Fugitive Witness, Kick-Back, Kidnapping, Killing or Assaulting Federal Officers, Amendment to National Motor Vehicle Theft Act, Interstate Pacts, Poultry Racket, *Racketeering Bill*, Rewards for Apprehension of Certain Criminals, Operations of Statute of Limitations, Criminal Conspiracy in Federal Penal and Correctional Institutions.

Legislation pending: Firearms, Alibi Defense, Aliens–Deportation of, Bail–Failure to Appear, Bail–Sources of, Bail, Bank Robbery Act Amendment, Behavior Records, Checks (Interstate), Consolidation of Investigative Agencies, Counterfeiting Dies, Tools, etc., Criminal Code Repeal, Depositions, Extradition, Federal Police, Fingerprinting, Frauds (Interstate), Fugitive Witness Act Amendment, Gambling Devices, Habeas Corpus, Killing or Assaulting Federal Officers, Motor Vehicle Theft Act Amendment, Waiver of Prosecution, Witnesses – Defendants Competent Witness, Witness–Husband and wife, Amendment to §389 of U.S. Code (liquor).

conspiracy as an element of the substantive offense. Brief of the United States, p. 20.

The omission of conspiracy as an element of the offense is consistent with the interpretation of the Court of Appeals, that "racketeering" implies an ongoing organized criminal enterprise, rather than an isolated act not involving any facet of "racketeering," as that term was used by the Copeland Committee. Section 2(d) of the Act provided that: [Any person who] conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall . . ." be guilty of an offense.[3]

It is not unreasonable to attribute to Congress a desire to punish any *individual* who violates the Act, without proof of a conspiracy to obstruct interstate commerce, so long as the individual is engaged in "racketeering." The fact that Congress did not require membership in a criminal conspiracy as an element of the substantive offense does not support the conclusion urged by the government that the omission of such a requirement negates a desire to reach racketeering, which by definition may have the attributes of an "organized conspiracy."

As Sen Rept. 532 (73rd Cong. 2nd Sess. (1934)) pointed out, prosecution of racketeers under the Sherman Anti-Trust Act was impractical, since "it is often difficult to prove that the acts of racketeers affecting interstate commerce amount to a *conspiracy*

[3]Changes in phraseology in the Criminal Code Revision deleted the "acts concertedly with any other person" language, as covered by the general "aiding and abetting" section. Act of June 25, 1948, 62 Stat. 793 (1948).

in restraint of such commerce, or a monopoly." (Emphasis supplied) It is consistent with the legislative intent that *acts* which are the product of a racketeering activity be punished, without the additional proof that the acts were part of an overall conspiracy. A conspiracy to engage in racketeering activity is punishable as such under the Act, by proof of an agreement. Congress intended to punish both the agreement and the act, if both constitute "racketeering."

Contrary to the government's assertion (Brief of the United States, p. 18), it is not the respondent's position (nor indeed, the holding of the Court of Appeals) that all of the 1934-1937 legislation proposed by the Copeland Committee was aimed at "racketeering" alone. It is clear from the legislative history, however, that Congress was sensitive to the local nature of many crimes, and did not intend to create a "national police force" beyond the areas traditionally within the constitutional limitations on federal power. S.Rep. 1189, *supra*, p. 2. Congress recognized, however, that racketeering was a product of organized crime, and that the interstate nature of most racketeering activities called for federal enforcement. There is no suggestion in Congress' consideration of the 1934-1937 anti-crime legislation that the "Racketeering Bill" pertains to banking activities. The reason for this is obvious. The bill was aimed solely at racketeering in interstate commerce, and nothing more. If Congress had wished to protect banks from racketeers, it could have done so in the Bank Robbery Act (48 Stat. 783, 50 Stat. 749, 18 U.S.C. §2113).

There is no indication in the legislative history of the Copeland Act, or in the amendatory language of the Hobbs Act, that Congress intended a broad application of the statute beyond those acts it defined as "racketeering" directly affecting interstate commerce. There was no necessity for any such sweeping coverage to prevent the evil the legislation sought to reach, as in *Perez v. United States*, 402 U.S. 146 (1971) (loansharking); *Everard's Breweries v. Day*, 265 U.S. 545 (1924), (intoxicating liquors); *United States v. Darby*, 312 U.S. 100 (1941) discussing *Thornton v. United States*, 271 U.S. 414 (1926), (diseased cattle); and *Scarborough v. United States*, ____ U.S. ____, 97 S.Ct. 1963 (1977), (firearms).

Congress aimed the anti-racketeering legislation at a class of activity (racketeering) which it found to affect interstate commerce, and thus within federal legislative control. *United States v. Green*, 350 U.S. 415 (1956).

Only by limiting the application of the Hobbs Act to the class of activity intended by Congress, when that activity constitutes even a *de minimus* burden on commerce, can this Court preserve the constitutional principle that primary police power rests in the states.

CONCLUSION

The decision below reflects a sensitivity to the encroachment by judicial legislation into the settled police power of the states. The interpretation of the statute urged by the government could result in the isolated robbery or extortion of a corner liquor store becoming a federal offense. This was clearly not the intent of Congress. The decision below should be affirmed.

Respectfully submitted,

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